Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81–283)

Notice of Recordation of Trade Name

"BULGARI"

On September 18, 1981, there was published in the Federal Register (46 FR 4661) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "BULGARI" or printed with a Roman u *i.e.*, "BVLGARI." The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application. The name "BULGARI" or "BVLGARI" is hereby recorded as the trade name of Ditta Sotirio Bulgari di Costantino e Giorgio Bulgari S.A.S., a partnership organized under the laws of Italy, located at 10 Via dei Condotti, Rome, Italy, when applied to fine watches, jewelry, ornamental works and artwork made of precious metal and precious or semi-precious stones and various other items made of precious metals, manufactured in Italy. Bulgari Distribuzione S.P.A. and Bulgari S.P.A. related firms located in Italy, and Anthos S.A. of Switzerland; Abrasale Paris S.A. of France and Abrasale S.A.M. of Monaco licensees, are authorized to use the trade name.

Dated: November 13, 1981.

A. Piazza,
Director,
Entry, Procedures and Penalties Division.

[Published in the Federal Register Nov. 18, 1981 (46 FR 56693)]

(T.D. 81–284)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified

buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
October 5–9, 1981	$0.000172
Chile peso:	
October 5–9, 1981	$0.025575
Colombia peso:	
October 5–8, 1981	$0.017715
October 9, 1981	.017800
Greece drachma:	
October 5, 1981	$0.017683
October 6, 1981	.017841
October 7, 1981	.017873
October 8, 1981	.017921
October 9, 1981	.018182
Indonesia rupiah:	
October 5–9, 1981	$0.001582
Israel shekel:	
October 5, 6, 1981	$0.074074
October 7, 8, 1981	.072569
October 9, 1981	.073368
Peru sol:	
October 5–8, 1981	$0.002212
October 9, 1981	.002203
South Korea won:	
October 5, 1981	$0.001453
October 6–9, 1981	.001468

(LIQ-01-03 O:C:E)

Dated October 9, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81–285)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York,

pursuant to Section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
October 7, 1981	$0.064392
October 9, 1981	.065402
Germany deutsche mark:	
October 8, 1981	$0.453309
October 9, 1981	.456517
Netherlands guilder:	
October 7, 1981	$0.407083
October 8, 1981	.408998
October 9, 1981	.412797
Switzerland franc:	
October 8, 1981	$0.535906
October 9, 1981	.543478

(LIQ-03-01 O:C:E)

Dated: October 9, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81-286)

Bonds

Approval and Discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 13, 1981.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Agricultural Carriers, Inc., 1627 S. Sabin, Wichita, KS; motor carrier; St. Paul Fire & Marine Ins. Co.	Oct. 1, 1981	Oct. 19, 1981	St. Louis, MO $50,000
American Red Ball Transit Co., Inc., 1335 Sadler Circle, E. Drive, P.O. Box 1127, Indianapolis, IN; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 7/1/76) D 10/28/81	Oct. 1, 1981	Oct. 28, 1981	Cleveland, OH $75,000
Louis James Brodie, dba: Brodie Truck Brokerage, P.O. Box 244, San Juan, TX; motor carrier; Fidelity & Deposit Co. of MD	June 1, 1981	Oct. 20, 1981	Laredo, TX $25,000
Caribbean Ships Chandler, Inc., 8000 N.W. 14th St., Miami, FL; motor carrier; Fidelity & Deposit Co. of MD	Aug. 14, 1981	Oct. 19, 1981	Miami, FL $25,000
Coastal Tank Lines, Inc., 250 North Cleveland-Massillon Rd., P.O. Box 5555, Akron, OH; motor carrier; Protective Ins. Co. (PB 1/1/76) D 10/21/81	Sept. 28, 1981	Oct. 21, 1981	Cleveland, OH $100,000
Conway Transportation, Inc., 3312 Eugenia Ave., P.O. Box 15951, Covington, KY; motor carrier; Buckeye Union Ins. Co.	Oct. 13, 1981	Oct. 28, 1981	Cleveland, OH $50,000
Raymond Corcoran Trucking, Inc., 149 Hilltop Road, Billings, MT; motor carrier; The Aetna Casualty & Surety Co.	Oct. 7, 1981	Oct. 22, 1981	Great Falls, MT $25,000
DeCato Bros., Inc., & S & K Trans. Inc., Heater Rd., Lebanon, New Hampshire; motor carrier; Nationwide Mutual Ins. Co. (PB 4/23/75) D 10/28/81	Sept. 25, 1981	Oct. 28, 1981	St. Albans, VT $25,000
Francisco A. Delgado, Inc., Box 7466, Ponce, Puerto Rico; motor carrier; New Hampshire Ins. Co. (PB 7/10/75) D 9/5/80[2]	Aug. 4, 1981	Aug. 28, 1981	San Juan, PR $25,000
W.R. Filbin & Co., Inc., 2436 Bagley St., Detroit, MI; motor carrier; Old Republic Ins. Co. (PB 10/15/80) D 10/15/81[3]	Oct. 15, 1981	Oct. 15, 1981	Detroit, MI $50,000
GO Transport & Delivery Service Inc., 6405 LaPort Rd., Houston, TX; motor carrier; St. Paul Fire & Marine Ins. Co.	Oct 15, 1981	Oct. 29, 1981	Houston, TX $50,000
Golden Strip Transfer, Inc., P.O. Box 458, Simpsonville, SC; motor carrier; United States Fidelity & Guaranty Co. (PB 10/16/79) D 10/21/81[4]	Oct. 16, 1981	Oct. 21, 1981	Charleston, SC $25,000
H.C.L. Transport Co., Inc., 4501 Curtis Ave., Baltimore, MD; motor carrier; St. Paul Fire & Marine Ins. Co.	Oct. 29, 1981	Oct. 30, 1981	Baltimore, MD $25,000
Clay Hyder Trucking Lines, Inc., P.O. Box 1186, Auburndale, FL; motor carrier; Aetna Casualty & Surety Co.	June 23, 1981	Oct. 13, 1981	Tampa, FL $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area disector/amount
P. Judge & Sons, Inc., Bldg. 1320 Dakar St., Elizabeth, NJ; motor carrier; Washington International Ins. Co.	Oct. 8, 1981	Oct. 23, 1981	Newark, NJ $50,000
Pete Kooyman Trucking, Inc., P.O. Box 1330, Stockton, CA; motor carrier; Ohio Casualty Ins. Co.	Nov. 12, 1980	Oct. 9, 1981	Los Angeles, CA $50,000
Lo Biondo Brothers Motor Express, Inc., Landis Ave., P.O.Box 160, Bridgeton, NJ; motor carrier; Hartford Accident & Indemnity Co. (PB 7/6/78) D 9/2/81 [4]	Sept. 2, 1981	Oct. 6, 1981	Philadelphia, PA $25,000
Loop Fleet Service, Inc., 1776 North CommerceSt., Milwaukee, WI; motor carrier; The Ohio Casualty Ins. Co.	Oct. 22, 1981	Oct. 22, 1981	Milwaukee, WI $25,000
Myers Transfer, Inc., 1241 Haines St., Jacksonville, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 29, 1979	Oct. 16, 1981	Tampa, FL $25,000
Penners Transfer Ltd., Steinbach, Manitoba, Canada; motor carrier; Royal Ins. Co. of America (PB 10/22/74) D 10/22/81 [6]	Oct. 1, 1981	Oct. 22, 1981	Pembina, ND $50,000
Red Star Express Lines of Ontario Ltd., 1608 Queensway, Toronto, Ontario, Canada; motor carrier; Liberty Mutual Ins. Co. (PB 12/11/75) D 10/23/81 [7]	Oct. 6, 1981	Oct. 23, 1981	Buffalo, NY $25,000
S & K Trans. Inc.—See DeCato Bros., Inc.			
Tamiami Tile Supply Corp., 7500 N.W. 41st St., Miami, FL; motor carrier; Aetna Ins. Co.	May 4, 1981	July 17, 1981	Miami, FL $50,000
Transport Lemoyne Ltd., 27 St. Louis St., Lemoyne, P.Q., Canada; motor carrier; The Hanover Ins. Co. (PB 6/26/77) D 9/28/81 [8]	Aug. 25, 1981	Sept. 28, 1981	Ogdensburg, NY $50,000
TRICOR Business Group Inc., 22 Olde Mill Run, Medford, NJ; motor carrier; St. Paul Fire & Marine Ins. Co.	Oct. 21, 1981	Oct. 23, 1981	Philadelphia, PA $40,000

[1] Principal is DeCato Bros., Inc.; Surety is St. Paul Fire & Marine Ins. Co.
[2] Surety is Puerto-Rican American Ins. Co.
[3] Surety is St. Paul Fire & Marine Ins. Co.
[4] Surety is Ins. Co. of North America.
[5] Surety is National Grange Mutual Ins. Co.
[6] Surety is Continental Ins. Co.
[7] Surety is Royal Globe Ins. Co.
[8] Principal is Beauvais Ltd.

BON–3–03

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 81-287)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

(10/12/81, Holiday, Countries Take 10/9/81 Rate)

Austria schilling:	
October 13, 1981	$0. 064641
October 15, 1981	. 064683
Netherlands guilder:	
October 13, 1981	$0. 408163
October 14, 1981	. 407747
Switzerland franc:	
October 13, 1981	$0. 537634
October 14, 1981	. 537057
October 15, 1981	. 534759
October 16, 1981	. 534760

(LIQ-03-01 O:C:E)

Dated: October 16, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81-288)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and other concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

(10/12/81, Holiday, Countries Take 10/9/81 Rate)

Argentina peso:	
October 13, 1981	$0. 000172
October 14–16, 1981	. 000167
Chile peso:	
October 13–15, 1981	$0. 025575
October 16, 1981	. 025576
Colombia peso:	
October 13–15, 1981	$0. 017800
October 16, 1981	. 017684
Greece drachma:	
October 13, 1981	$0. 017986
October 14, 1981	. 017825
October 15, 1981	. 017969
October 16, 1981	. 017668
Indonesia rupiah:	
October 13–15, 1981	$0. 001582
October 16, 1981	. 001583
Israel shekel:	
October 13, 1981	$0. 073368
October 14–15, 1981	. 073099
October 16, 1981	. 072834
Peru sol:	
October 13–15, 1981	$0. 002203
October 16, 1981	. 002189
South Korea won:	
October 13–15, 1981	$0. 001468
October 16, 1981	. 001460

(LIQ-01-03 C:C:E)

Dated: October 16, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

357-929 O - 81 - 2

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 13, 1981.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the Customs Bulletin.

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

(C.S.D. 81-231)

Subject: Marking: Use of Metallic Foil Pressure Sensitive Gummed Labels Meets Country of Origin Requirements. However, Imprinted Lettering Must Be Legible to the Naked Eye

Date: May 28, 1981
File: MAR-2-05 CO:R:E:E
716411 SO

This is in response to your letter of April 16, 1981, concerning the country of origin marking requirements applicable to a brass trivet which was purchased in a retail store in Atlanta, Georgia. The words, "Handmade in Taiwan," appear in very small print on a metallic foil gummed label which is securely fastened to the reverse side of the trivet. The trademark of the manufacturer, (name) also appears in much larger letters on the label. You noted that the article is a copy of the Newport Pineapple Trivet manufactured by your firm. You feel that the label is misleading to the public in that the country of origin is not legible, and the label itself is flimsy and easily removed. You noted that the article has the name (Trademark Name) die sunk on the rear in large size letters along with copyright and trademark notices. You feel that the country of origin marking could also be handled in the same manner.

We have examined the sample you submitted and concur with your opinion that the diminutive letters in the words, "Handmade in Taiwan," are insufficient in size to meet the requirements of 19 U.S.C. 1304, that all articles of foreign origin imported into the United States

must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. However, we are of the opinion that pressure sensitive gummed labels constructed of metallic foil, such as the sample label used in this case, would be sufficiently sturdy to adhere to the article until it reaches the ultimate purchaser in the United States, provided the label is large enough to accommodate letters which are legible to the naked eye, for use in marking the country of origin.

A copy of this letter will be circulated to all Customs ports of entry, so that there will be uniform enforcement of the marking of country of origin requirements applicable to cast brass articles, regardless of which port they may enter the United States. In addition, per his request, we are providing Congressman M. Caldwell Butler with a copy of this reply.

(C.S.D. 81-232)

Subject: Value: Applicability of "Super-Deductive" Value, TAA, as a Proper Basis of Appraisement to Certain Merchandise Which is Further Processed in the United States.

Date: June 10, 1981
File: CLA-2 CO:R:CV:V
542476 BS
TAA #28

This is in reference to your letter dated December 17, 1980, and subsequent submissions, in which you request a ruling regarding the proper basis of appraisement to be used in the valuation of 48 light rail cars (street cars) which are to be imported into the United States.

The subject vehicles are being produced by (corporate name and geographic location) for the (Company Name).

The contract between (name) and (name) requires that the final assembly of the vehicles will be performed in the (city name) area and (name) has subcontracted that task to a department of the (corporate name and geographic location). In addition, (name) has executed subcontracts with other American transit equipment suppliers to provide 42 percent of the vehicle components in the United States. The parts of the vehicles that (name) is exporting to the United States, half-body, motor truck, trailer-truck, will thus be assembled and integrated with the U.S.-made components by (name) at its (city name) facility. After various testing procedures required by the (name) contract, the vehicles will be transported by (name) to (name) for final acceptance.

The contract also provides that, for the first four cars, the U.S.-parts will be shipped to Italy, partially assembled with the other compo-

nents, and shipped back to the United States in this partially assembled condition. Final assembly, fittings, testing, etc., will be accomplished by (company name and location) before delivery to (name) for final acceptance. To date, three separate shipments have been made from Italy, one through Philadelphia on October 29, 1980, a second through Baltimore on November 8, 1980, and a third through Baltimore on December 2, 1980.

Pursuant to oral discussions at the Value Branch, Customs Headquarters and at the New York Seaport, we understand that the imported merchandise consists primarily of two major parts of the rail car, Part "A" and Part "B" which make up the front and rear of the vehicle when completed. Part "A" will be imported with a "bogie" (undercarriage containing axle, wheels and motor) and an articulated piece connecting the cars to allow for some vertical and horizontal movement; Part "B" will come in with a bogie and trailer-truck.

Part "A" differs from part "B" in that each has certain items lacking in the other. However, all of the parts will be classifiable under the tariff provision for parts of self-propelled rail vehiches, designed to carry passengers or articles, under item 690.40, Tariff Schedules of the United States (TSUS).

The contract between (name) and the transit authority calls for a unit price per vehicle of (amount). This price includes the cost of assembly performed by (name) in the United States, which is the subject of the subcontract between (name) and (name). The cost of assembly by (name) for each of the 48 cars, as set forth in the submitted contract, is (amount).

The contract between the principals also provides that total deliveries are to be completed within 36 months after completion of the contract documents. In addition, payments to (name) for the cars are to be made on a monthly basis dependent on (name) cost, subject to certain limitations based on the work performed, subject to (name) approval, and to delivery and final acceptance by (name) of the cars.

Based on the circumstances of the transaction as set forth in the contract and your other submissions, it is our opinion that transaction value, section 402(b), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), cannot be used as the basis of appraisement since there is no *price actually paid or payable for the imported merchandise when sold for exportation to the United States*. The price by (name) to (name) is a total price which includes the cost or value of the assembly work performed by (name) in the United States, after importation of the merchandise. Furthermore, since the price of the cars to (name) includes the assembly work done in the United States, it is apparent that title to the imported merchandise does not pass to (name) until after completion of such assembly work performed by

(name) and, it appears, upon final acceptance of each car by (name). Therefore, there is no sale for exportation to the United States of the imported merchandise as required by the statute. You also advise that there are no sales of identical or similar merchandise for exportation to the United States. See section 402(c), TAA.

Since transaction value cannot be found, deductive value, section 402(d), is the next basis of appraisement to be used, unless the importer designates, at entry summary, computed value as the preferred method of appraisement. Basically, deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. Section 402(d)(2)(A)(iii) provides as follows:

> (iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the Customs officer concerned of that election within such time as shall be prescribed by the Secretary.

The price determined under this paragraph is subject to certain deductions, including the usual commissions for general expenses and profit made in connection with sales in the United States of imported merchandise of the same general class or kind; actual cost of international freight and insurance; usual costs of transportation and insurance in the United States, if not otherwise included; and Customs duties and Federal taxes payable on the merchandise, and certain other Federal excise taxes. In addition, the price is reduced by the value added by processing of the merchandise after importation *to the extent the value is based on sufficient information.* (Emphasis added). See section 402(d)(3)(A)(v).

It is our opinion that "super deductive" value (section 402(d)(2)(A)(iii)) may be used as the proper basis of appraisement (assuming the appropriate election is made), as long as the cost of the processing by (name) in the United States can be determined by "sufficient information," and if the time limitations therein provided are satisfied.

In this regard, the concerned import specialist advises that it was indicated during his various meetings with the manufacturer that the cost of assembly by (name) of (amount) for each car was an average cost and did not properly reflect the actual cost of assembly on each separate assembly operation. We note that an appropriate allocation would have to be made to the various imported parts to reflect a proper appraised value for each part; further, the record discloses that the first four cars are imported at a stage of assembly more advanced than those that will follow.

357-929 O - 81 - 3

Since those discussions, you have submitted a breakdown of (name) cost for each assembly operation, which is as follows:

Component	Amounts	
	Prototypes	Product in cars
Truck assembly	$	$
Half car body A		
Half car body B		
Articulation		
Clean-up, testing, shipping, etc		

The concerned import specialist has questioned whether a further breakdown of the assembly cost may be required in order to properly appraise the imported parts (other than Part "A" and Part "B"). While this may be necessary, it would not prevent the applicability of "super-deductive" value, as long as it is based on sufficient information. Of course, all costs submitted are subject to verification and must be in accordance with generally accepted accounting principles.

We would also note that the failure by (name) the U.S. manufacturer of the brakes supplied to (name) (applicable only to the first four cars) to include the cost of freight and insurance in the sale to (name) is not relevant to our determination. As (name) is not the purchaser of the merchandise, no assist is involved. See sections 402(h)(1)(A) and 402(d)(3)(D), TAA.

Your attention is also invited to section 402(f)(1), TAA, which provides, in effect, that if the various bases of appraisement are found to be inapplicable, then the merchandise shall be appraised on the basis of a value that is derived from the methods set forth under such bases of appraisement, reasonably adjusted to the extent necessary to arrive at a value. We refer to this provision in particular inasmuch as you have advised that the 180-day requirement under section 402(d)(2)(A)(iii) may not be satisfied with respect to the first four prototype cars, and under section 402(f)(1), TAA, one "reasonable adjustment" that may be considered could involve an extension of the 180-day requirement.

(C.S.D. 81-233)

Subject: Tariff Classification: Pharmaceutical Drug Products Classifiable as an Antibiotic, Antidepressant and Diuretic

Date: June 16, 1981
File: CLA-2-04:S:C:D6:63-346
800754

In a letter dated May 20, 1981, you inquired as to the dutiable status of six pharmaceutical drug products manufactured in Italy.

The drugs, their use and classification are as follows:

Product	Use	Tariff No.	Duty rate (percent)
Ampicillin trihydrate	Antibiotic	411.60	11.9
Amoxicillin trihydrate	Antibiotic	411.74	7.4
Imipramine hydrochloride	Antidepressant	412.30	11.1
Chlorothiazide	Diuretic	412.68	12.0
Hydrochlorothiazide	Diuretic	412.68	12.0
Tetracycline	Antibiotic	437.32	4.7

With the exception of tetracycline all of the above products are benzenoid drugs.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 CFR 177.1).

(C.S.D. 81-234)

Subject: Tariff Classification: Technical Grade Benzenoid Pesticides and Formulated Benzenoid Pesticides Are Classifiable Under Item 408.16, TSUS and 408.38, TSUS, Respectively

Date: June 19, 1981
File: CLA-2-04:S:C:D6-63-223
800529

In a letter dated March 28, 1981, you inquired as to the dutiable status of three benzenoid fungicide products with the trade names Topsin, Topsin E, and Topsin M manufactured in Japan. In addition, you requested a definition of the term "not artificially mixed" as it applies to benzenoid chemical pesticides.

Benzenoid pesticides provided for in Subpart C, Part 1, Schedule 4 of the Tariff Schedules of the United States (TSUS) fall into two categories defined as follows:

Benzenoid pesticides classified under the provisions for Pesticides: Not artificially mixed, items 408.16 through 408.32 TSUS, are concentrated forms of the pesticide chemicals as they are produced, and are not useful as such until properly formulated. They may contain some minor byproducts such as isomers, unreacted raw materials, naturally occurring reaction byproducts, and so forth.

Benzenoid pesticides classified in items 408.36 and 408.38 TSUS are formulated products that have been artificially mixed with carriers, diluents, solvents, surfactants (wetting agents, emulsifiers, etc.) to give proper results upon application. These would include emulsifiable concentrates, granular formulations, wettable powders, dusts, and mulls. Classification under item 408.36 is contingent upon the inclusion

of the active ingredient in the Chemical Appendix to the Tariff Schedules.

Accordingly, Topsin E and Topsin M, which are technical grade benzenoid pesticides, are classifiable under the provision for Fungicides, not artificially mixed in item 408.16 TSUS, and are dutiable at the rate of 0.8 cents per pound plus 12.5 percent ad valorem. Topsin is a formulated benzenoid pesticide classifiable under the provision for Pesticides: Other: Other, in item 408.38 and dutiable at the rate of 0.8 cents per pound plus 9.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1).

(C.S.D. 81-235)

Subject: Drawback: Shearing of Mischmetal Chunks Into Smaller Sized Pieces Then Bagging for Use in Steel Production is a Manufacture of Production for Purposes or Drawback.

Date: June 26, 1981
File: DRA-1-CO:R:CD:D
212981 WR

Issue: Whether the shearing of 1- and 2-pound chunks of mischmetal into 2- or 4-ounce chunks so that they can be used in steel production is a manufacture or production for drawback purposes?

Facts: The mischmetal in issue was formed into very large wafers in Brazil to be used in a steel process called ladle plunging. The process consisted of placing a stack of these wafers in a ladle of molten steel. The mischmetal is highly reactive and it was anticipated that the stacked wafers would melt and be distributed evenly throughout the steel. The anticipated results were not realized. In order to avoid uneven distribution of mischmetal in the product, steel ingots, another process was developed in which a bag of smaller pieces of mischmetal is dropped into the ingot mold rather than into the ladle. Because the Brazilian steel process could not be used, a large quantity of mischmetal wafers was availiable and was bought by an American mischmetal processor. For ease of transportation, the Brazilian supplier broke the large wafers into chunks with nominal weights of 1- and 2-pounds. Because of their size, these 1- and 2-pound chunks could not be used in the Brazilian ladle-plunging process or in the American process of adding a bag of small pieces to the ingot mold.

The American mischmetal processor shears the 1- and 2-pound chunks into smaller pieces having nominal sizes of 2- and 4-ounces. The processor bags the 2- and 4-ounce pieces separately; the 2-ounce pieces in one bag and the 4-ounce pieces in another bag. Both sizes

are bagged into 2-, 4-, and 10-pound bags. Depending on the ingot size, a steel producer specifies a certain piece size of mischmetal. For example, the optimum piece size for an ingot of 5 to 10 tons is the 2-ounce size. The 4-ounce piece size is best used in an ingot of 15 to 30 tons.

Law and analysis: In C.S.D. 79–88, the Customs Service ruled that the shearing of mischmetal into smaller pieces does not constitute a manufacture or production for drawback under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)). In the analysis of the situation then presented it was concluded that a new and different article having a new name, character, or use did not result from the shearing process. However, the evidence on which that conclusion was based was very sketchy. No attempt was made by the drawback claimant in that case to document the end use, if any, of the sheared pieces or whether the pieces were sheared to a specified size.

There have been numerous court cases which seem to reach different conclusions on what is a manufacture or production. In the case of *U.S. v. Samuel Dunkel & Co., Inc.*, 33 C.C.P.A. 60, C.A.D. 317 (1945) a divided court held that the cutting of bulk butter into print butter did not create a new article having a distinctive name, character, or use. The majority held that the exported butter was the same as the imported butter, altered in form, and dedicated to the usual butter uses. In the case of *United States v. International Paint Co.*, 35 C.C.P.A. 87, C.A.D. 376 (1948), a unanimous court distinguished the *Dunkel* case by finding that the process of eliminating mineral acids and metallic salts and adding varnish to a paint substance created a new use for a substance that was known as "paint" before and after the process. The process consisted of pouring out those impurities which naturally separated to the top of the paint, mechanically stirring the remainder to cause a further separation and pouring out those impurities, and then adding varnish to the impurity-free residue to increase viscosity. The critical point for the court in *International Paint* seems to be the recognition that the paint in its imported condition could not be used to protect steel hulls, but that it could be so used after the processing. In the case of *Western Novelty Co. v. U.S.*, 9 Cust. Ct. 429 Abs. 47632 (1942), the court held that cutting a strand of chip roving to a specific length and tying the ends together to make an imitation lei created a new article, notwithstanding the relative simplicity of the process.

The Customs Service in recent years has adopted an expansive view as to what is a manufacture or production. For example, until 1971, the Customs Service ruled that heat-treating of steel was not a manufacture. Thereafter, following a re-evaluation of that position, the Customs Service held that the hardening and tempering of steel

fasteners by heat-treating was a manufacture or production for drawback purposes. See T.D. 72-108(2). In a more recent decision which was published as C.S.D. 79-339, the Customs Service held that cleaning, sorting, bagging, and in some cases, splitting peas that were unfit for human consumption when imported is a production eligible for drawback because the end product was peas that were fit for consumption.

The situation here is analogous to the situation described in C.S.D. 79–339. Although the sheared mischmetal pieces remain unchanged in name from the larger unsheared chunks, the bagged smaller pieces can be used in steel production. The larger unsheared chunks had no such use.

Holding: The shearing of mischmetal chunks which have no use into smaller specifically sized pieces and the bagging of those pieces for use in steel production is a manufacture or production for drawback purposes.

C.S.D. 79–88 is modified accordingly.

(C.S.D. 81–236)

Classification: Toy Figures Of Imaginary Characters Or Creatures, Specifically, Extraterrestrial Creatures Associated With Science Fiction

Date: July 1, 1981
File: CLA-2 CO:R:CV:G
065735 JCH

This decision concerns the tariff classification of toy figures of imaginary characters or creatures, specifically, extraterrestrial creatures associated with science fiction.

Issue: The competing provisions whose application is in question are items 737.40, Tariff Schedules of the United States (TSUS), which encompasses toy figures of animate objects, and item 737.95, TSUS, which encompasses other toys, not specially provided for. Classification under item 737.40 would entitle the ruling applicant to an exemption from duty under the Generalized System of Preferences.

Facts: The merchandise consists of figures from the television "Flash Gordon" and "Battlestar Galactica" offerings. The figures are Thun, the lion man, a tan or orange man with leonine facial features; Vultan, a man in ancient armor with wings; Lizard Woman, a green figure with limbs and torso suggesting a human, but with a tail and head suggesting a lizard; Beastman, a figure with an ape-like head on a human-like body; Lucifer, a purple-robed creature with humanoid facial features; Ovion, a green creature with two legs and four arms

suggesting the features of an insect or reptile; Imperious Leader, a figure with arms and legs covered by a textile toga-like garment, but with a head suggesting reptilian characteristics; and Boray, a figure with a human body, an orange head, pointed ears and other grotesquely distorted humanoid features.

Law and analysis: In counsel's submission of November 21, 1980, emphasis was placed on the ruling applicant's reliance on our ruling in C.S.D. 79–501, file No. 055257, hereinafter referred to as our Star Wars decision, on the ruling applicant's reliance on advice from the national import specialists in entering the merchandise in question under item 737.40, and on the inappropriateness of limiting the scope of the Star Wars decision in our ruling hereinafter referred to as our Micronaut decision, of August 11, 1980, file No. 062708, in view of the special procedures which should be followed when a decision amounting to a change of practice is made. However, it is our understanding from counsel's submission on February 10, 1981, and from views expressed during a second conference on February 20, 1981, that it is no longer claimed that the Micronaut decision and the Star Wars decision are incompatible. The thrust of counsel's claims now is that the merchandise which was the subject of the Micronaut decision contained features such as clip-on armaments, which were incompatible with life and therefore distinguishable from the Star Wars merchandise. At the conference on February 20, 1981, samples were shown to demonstrate this claim. Samples were also presented for the first time to illustrate the claim that, particularly with respect to the Star Wars creature Chewbacca, there was no significant difference between that merchandise and the instant merchandise.

The claim underlying counsel's several presentations is that the requirement that toy figures represent living things or things endowed with life does not require that the articles literally represent real life forms, and that various administrative and judicial precedents illustrate this premise. A review of these decisions shows that we classified as toy figures of animate objects certain Frankenstein monsters in T.D. 56478(190), 100 Treas. Dec. 525 (1965). We also accorded similar tariff treatment to certain Sesame Street figures in our decision of August 2, 1976, file No. 04128. In our Star Wars ruling, we regarded as toy figures of animate objects figures depicting characters or creatures from the motion picture "Star Wars".

Among the court cases counsel relies on is *Dobson* v. *United States*, 28 Cust. Ct. 290, C.D. 1424 (1952), in which the court resorted to lexicographic authorities to determine that toy figures attached to metal toys were images of animate objects. More importantly, counsel relies on *Exhibit Sales, Inc.* v. *United States*, 72 Cust. Ct. 119, C.D. 4512 (1974), in which an egg-shaped fireman with wheels was classified

as a toy figure of an animate object, and on *Sports Specialties* v. *United States*, 65 Cust. Ct. 550, C.D. 4137 (1970), in which a papier mache mascot consisting of a cardinal's head and baseball player's body was classified under item 737.40.

These precedents were cited to show that imaginary or fictional creatures have previously been regarded as animate. It was also emphasized in counsel's presentation, including a meeting at Headquarters on January 16, 1981, that the mascot figure in the *Sports Specialties* case combined bird and human characteristics and, therefore, was analogous to the instant figures which combine reptilian, insect or other subhuman anatomy with human anatomical features.

This matter involves the reconciliation of two opposite classification approaches. There is at one extreme the view that any imaginary figure should be regarded as animate if it is not vegetable, mineral or a machine and is more closely identified with the fauna of earth or an imaginary planet rather than with earthly or alien flora. At the other extreme is a conservative application of what constitutes an animate object as defined in dicta in *Lewis Galoob Co.* v. *United States*, 66 Cust. Ct. 484, C.D. 4239 (1971), and *Louis Marx & Co.* v. *United States*, 66 Cust. Ct. 139, C.D. 4183 (1971). In these decisions the court took the position that animate objects only were those which were endowed with life or which represented living beings. Accordingly, a robot with a human face painted on it and fruit figures with facial features superficially superimposed were not regarded as toy figures of animate objects.

We agree with counsel that the dicta in these decisions should not be applied too literally, and, obviously, we did not do so in our Star Wars decision. However, it was and continues to be our position that there are limitations on the extent purely imaginary creatures may be regarded as animate.

It is now your contention that these limitations are exceeded with the merchandise which was the subject of our Micronaut decision since that creature had features which were incompatible with life, viz. clip-on armaments at its distal extremities, and otherwise had less relationship to human anatomy than the Star Wars creatures and the instant creatures. But regardless of conclusions to be reached from viewing a sample Micronaut, a stricter limitation was articulated in the Micronaut decision. That limitation, as first expressed in the Star Wars decision, was that not all extraterrestrial creatures would be regarded as animate, but only those would be so regarded which were "humanoid" or otherwise depicted the essential characteristics of other recognized earthly creatures.

These former decisions were aiming for a middle ground between the thesis that all exemplars of earthly or imaginery fauna must be

regarded as animate and the thesis that only those faithful to actual known animal species qualify. In applying this approach, there can be little argument that Vultan, Lucifer and Boray are humanoid in the same sense that certain of the Star War figures were humanoid. Accordingly, the ruling applicant is entitled to no less favorable tariff treatment for these articles than was accorded the Star Wars merchandise.

But we find that an opposite conclusion must be reach with respect to Ovion. While it is claimed that Ovion lacks clip-on armaments or other features which excluded the Micronauts from being regarded as animate, it is our view that this creature is on the other side of that middle line between what can be regarded as possessing life and what is purely imaginary. Ovion could only be regarded as classifiable under item 737.40 if we adopted the broad classification thesis that all exemplars of imaginary fauna would be regarded as animate. As indicated from our earlier decisions, it is our view that the *Galoob* and *Marx* decisions are a constraint against this classification approach, and that to adopt the broad classification thesis would do too great a violence with the court's clearly more circumspect classification approach in those cases.

The more difficult issues which remain, and for which our previous decisions do not provide specific guidance, concern the classification of imaginary creatures which combine human anatomy with features from other segments of the animal kingdom as we know it on earth to form imaginary characters of extraterrestrial origin. Unlike the wings of Vultan, which like an angel's wings, are subsidiary to his humanoid form, the subhuman anatomical features of the characters in question, viz. Thun, Lizard Woman, Beastman, and Imperious Leader, are major components of their alien nature.

It would be convenient if we could regard these combinations as novel and, therefore, clearly not encompassed by the pertinent statutory language whose meaning cannot be interpreted without some reference to its meaning at the time it was written. However, fantasies regarding combinations of human and lower animal forms have a long history which stretches from the satyrs of mythology to the creatures in H.G. Wells' "The Island of Dr. Moreau." The instant creatures are merely a continuation of that fantasy. On the other hand, it would also be convenient to accept counsel's suggestion that the *Sports Specialities* decision, *supra*, which dealt with a bird-man mascot, as good authority for excluding toy figures of combination creatures from item 737.95. However, item 737.95 was not in issue as an alternative classification in that case, since the plaintiff was pressing for a classification in Schedule 2, TSUS. In fact, item 737.95 would have carried the same rate of duty as item 737.40. Therefore, any concern by the court, the Government or the plaintiff that item

357-929 O - 81 - 4

737.95 might have been a more appropriate classification would have been entirely moot. Accordingly, we believe that the court's reasoning in the later *Galoob* and *Marx* cases where the issues addressed were closer to the instant issues provides more pertinent guidance.

The further view that the *Exhibit Sales* decision took the edge off of the conservatism of the *Marx* and *Galoob* decisions is also of little help here. The *Exhibit Sales* decision only served the purpose of showing that a caricature-type article would not be excluded from item 737.40. While the egg-shaped fireman and the familiar Sesame Street talking animals are, in a sense, caricature-type articles, the instant combination articles, including Ovion, clearly are not caricatures.

Amid these various considerations, it has been interpreted from our previous decisions and, in effect, advocated by counsel, that whether a creature is animate or not may depend upon the degree of reality imparted to it through the conventions of the theater, video or literature, as the case may be. Specifically, we noted in our Star Wars decision that the Star Wars creatures "think, play, fight, and communicate" like humans. Accordingly, there has been the inference that what is to be regarded as humanoid is to be determined by behavioristic considerations rather than by anatomical differentiations. However, behavioristic considerations were primarily mentioned with respect to creatures like the robed Jawa whose configuration did not suggest the anatomy of lower animal forms, but was left more to the imagination and inferences from behavior. We also made it clear in the Star Wars decision that "[o]nly those [extraterrestrial creatures] which are humanoid in *form*" [emphasis supplied] would be regarded as humanoid.

The configurations of Thun, Lizard Woman, Beastman and Imperious Leader leave little to the imagination, and any assessment regarding their faithfulness to animal or human-like prototypes can be based entirely on visual inspection. This would be the same manner in which, for example, figures of robots would be classified as other than toy figures of animate objects, in which situation any reference to any role played by a theatrical prototype would be entirely irrelevant. With respect to the question as to whether the figures in question are humanoid, we find that it is the specific intention of their inventors by the superimposing of subhuman characteristics on these articles to make them nonhumanoid. We find that a character cannot be both leonine, lizard-like or bestial and be humanoid at the same time.

While it may be argued the intention is only to make them nonhuman, an intention common to all imaginary extraterrestrial creatures, there is, nevertheless, more of an analogy to human life represented

by some of the figures than by others. The predominance of characteristics antithetical to the human life analogy negates the appropriateness of the term "humanoid" in describing the articles. It further negates the appropriateness of referring to the performances of actors or actresses depicting representations of the same creatures to make something in the imagination what it clearly is not in physical form, as opposed to a form ambiguously rendered. In this connection, articles are dutiable in their condition at the time of importation. This fundamental principle relates to an article's actual physical condition, not to any condition projected to it through the process of imagination.

Therefore, if Thun, Lizard Woman, Beastman and Imperious Leader are to be classified under item 737.40, that classification must be predicated on their characteristics which are analogous to subhuman life forms. But their hybrid nature detracts from any such analogies for the same reasons it detracts from their analogy to humanoid forms. In this connection, counsel cites the Star Wars creature Chewbacca as an exception to the foregoing rationale which should rather represent the rule. In our opinion, however, Chewbacca was not a hybrid creature, but more like an undifferentiated exemplar of a subhuman primate and, therefore, closer to actual earth forms than the instant merchandise.

While counsel has asserted the articles in question are marketed as "human-like", the exhibits and samples which have been provided do not establish in any way that there is a commercial designation factor in this matter which is pertinent to classification.

The foregoing analysis renders it unnecessary to discuss counsel's various arguments against classifying any of the articles in question as dolls. With respect to Vultan, we find that while his wings are subsidiary to his otherwise humanoid form, they are of sufficient prominence to preclude classification as a doll. Further we find that any aggregations of the above articles warranting different classifications in single packages would not warrant classification of the contents of those packages as entireties.

Holding: Our previous decisions in C.S.D. 79–501 and of August 11, 1980, are affirmed, except to the extent that they implied that the principles of those decisions were limited to the merchandise of the importers concerned, or are otherwise inconsistent with the views expressed herein.

We find that the figures of Vultan, Lucifer and Boray are classifiable as toy figures of animate objects under item 737.40. We further find that Thun, Lizard Woman, Beastman, Ovion and Imperious Leader are classifiable under the provision for other toys in item 737.95.

(C.S.D. 81-237)

Subject: Instruments of International Traffic: Use of Truck Tractor Units in International Traffic

Date: July 7, 1981
File: BOR 7-04 CO:R:CD:C
105181 JM

This is in reference to your letter of May 21, 1981, which requested information concerning use of tractor trailer units. Your questions are set out below and answered in the order they appear in your letter.

Question 1. Your Canadian manufactured truck tractors with trailers of Canadian or United States manufacture will enter the U.S. at various and random ports of entry in international traffic. Is it possible to use such equipment to move domestic traffic when such movement is incidental to the return of the equipment to Canada?

Section 123.14(a), Customs Regulations, provides that a foreign based vehicle which is engaged in international traffic, such as arriving with merchandise destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise, may be admitted without formal entry or the payment of duty. Vehicles so admitted may be used in local traffic in the United States only in accordance with either of the exceptions stated in section 123.14(c), Customs Regulations. A foreign-based vehicle may carry merchandise between points in the United States under section 123.14(c)(1) if the carriage is directly incidental to a regularly scheduled trip in international traffic. Section 123.14(c)(2) permits a foreign-based truck trailer to be used on the return trip to the country from which it entered the United States for such local traffic as is reasonably incidental to its economical and prompt return.

In view of the fact that the tractor trailer units will be arriving at "various and random" ports of entry, these units will not be operating on regularly scheduled trips and can not be used in any local traffic. However, the truck trailers could be used as shown in example A and B in your letter if pulled by a tractor qualified to engage in local traffic, i.e. a United States built tractor or a foreign built tractor which had been properly imported into the United States. Since the domestic traffic contemplated under example C to the above question would be a part of the inward trip, the truck trailers may not be used for this proposed movement.

Question 2. May a unit make proper entry and declaration for entry into the United States and then be used for domestic traffic prior to its return to Canada? If no domestic use in Canada was made prior to the subject units' return to the U.S., is the same declaration still valid?

If a tractor trailer unit is entered under a consumption entry, with payment of duty if applicable, that unit may then be used in domestic traffic in the United States. If the unit is returned to Canada, assuming the unit is based in Canada in the absence of a statement to the contrary in your letter, it will be considered exported in that it has been severed from the mass of things belonging to this country with the intention of uniting it with the mass of things belonging to Canada. In Treasury Decision 78–288, Customs held that an aircraft under British registry which had been imported into the United States for repair was exported when it left the United States to reenter international traffic. Following that decision, your tractor trailer units based in Canada will be subject to Customs entry and payment of duty each time they enter the United States to be used in domestic traffic other than that permitted by section 123.14 Customs Regulations as set out above.

Question 3. You operate a daily service between your terminals at Houston and Calgary using different tractor trailer units. Will this constitute scheduled service?

Customs has held that a carrier may be considered as engaged in regularly scheduled service whether trips are scheduled hourly, daily, or weekly, etc., provided the trips are regular, not varied and are over an established route. If your daily trips are over an established route the tractor trailer units may be used between points in the United States if the carriage of merchandise is incidental to its regularly scheduled trip in international traffic.

You also asked the following questions concerning tractor trailer units which have been properly entered into the United States as imported merchandise. These units will be based at your Houston Terminal and operate out of that location.

Question 1. Will this equipment be eligible to operate within the U.S. hauling domestic traffic?

Insofar as laws are administered by Customs are concerned, there are no restrictions on the use of these units which have been properly entered with payment of any applicable duty.

Question 2. Will such equipment be able to haul to Canada with international freight and return to the U.S. without having hauled domestically in Canada?

Since the equipment is based in the United States, it will not be considered exported when it leaves the United States in international traffic and is not used in other than international traffic while outside the United States. Accordingly, entry as imported merchandise will not be required if this equipment returns to the United States for use in domestic traffic.

Question 3. If the unit did haul domestically in Canada while based in Houston, what are the re-entry requirements?

If a tractor trailer unit based in Houston proceeds to Canada where it is used to haul domestically, the unit will be considered exported. Entry as imported merchandise with payment of any applicable duty must be made upon the units return to the United States prior to use in point-to-point traffic in the United States.

Question 4. What constitutes or qualifies the identity of a base for a unit to operate from?

Customs has no requirements for a base of operations. So long as an operator has the intention to establish his base of operations in a certain place and operates out of that location, Customs will consider that place as his base of operation.

Your last question asked whether a truck (tractor) may be declared as a separate entry, then go back across the line and bring the trailer as a separate entry. Customs has previously held that a tractor may be entered into the U.S. as imported merchandise, return immediately to Canada in international traffic and return to the U.S. with the trailer attached. Upon return to the United States, the tractor would enter as an instrument of international traffic while the trailer would be subject to entry as imported merchandise.

(C.S.D. 81–238)

Subject: Value: Pursuant to Sec. 402(h)(1)(A), TAA, a Metal Stamper Used to Press a Record is Considered a Mold Utilized in the Production of Imported Merchandise Therefore a Dutiable Assist

Date: April 3, 1981
File: 542355 BLS
TAA #21

To: District Director, Seattle, Washington

From: Director, Classification and Value Division, Office of Regulations & Rulings

Subject: Request for Internal Advice No. 214/80; Value of Metal Stamper

The issue in the case is whether a metal "stamper" used to press a record is a tool, die, mold or similar item under The Trade Agreements Act of 1979 (TAA); and if so, what are the elements of cost which comprise the value of the assist?

The importer is involved in the production of 33⅓ r.p.m. stereo records. It contracts with recording artists, hires musicians, the recording studio and the various technicians necessary to produce a digital recording (tape) of the sessions. From the tape is produced a

master lacquer which is then plated to make the metal master from which is made the mother and from which is made the stamper. The stamper is then used, one for each side of the record, to stamp out the vinyl records which are the product which is imported and sold at the retail level.

The whole process described above is, in this case, done in the United States up to and including the production of the stampers. The stampers are exported to the manufacturer in Japan to be sent to the importer in dust covers but without record jackets. The invoiced price of the records represents only the charge for the materials, labor, and profit of the manufacturer.

It is clear from the description and function of the metal stamper that its use is analagous to that of a mold and that without it the records as imported could not be produced. Accordingly, we find that the metal stamper is in the nature of a mold or similar item used in the production of the imported merchandise, and therefore is a dutiable assist.

The second issue is the value of the assist. The importer has advised that the following costs were incurred to produce the metal stamper: (1) Musicians and Arrangements—$8,100; (2) Rehearsal Pay—$1,000; (3) Rehearsal Hall Rent—$450; (4) Agency Fee—$350; (5) Studio Cost—$3,500; (6) Digital Recorder—$4,000; (7) Engineer—$1,000; (8) Cartage—$100; (9) Mastering—$800; (10) Plating—$1,500; and (11) Producer—$8,000. The total cost is $28,800.

Section 152.103(d)(2) of the Customs Regulations provides that the value of an assist in the nature of a tool, die, mold, or similar item, is its cost of production if produced by the buyer (of the merchandise) or a person related to the buyer. Accordingly, the value of an assist in this situation will be the cost of producing the assist as reflected on the books of the producer of the assist, so long as the records have been maintained in accordance with generally accepted accounting principles (GAAP).

In this case, the stamper could not have been brought to its completed condition without the particular music contained thereon. Without the music, the metal stamper would have been a plain stamper which could not be used in that condition in the manufacture of the imported phonograph records. Therefore, as these costs appear to be directly related to the production of the assist, in the absence of a showing to the contrary, we believe that the application of GAAP requires them to be included in the cost of producing the assist.

Under section 402(h)(1)(A), TAA, the term "assist" means certain enumerated items if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United

States of the merchandise. Included among the listed items are "tools, dies, molds, and similar items used in the production of the imported merchandise."

(C.S.D. 81-239)

Subject: Classification: Application and Interpretation of the term "Rubber or Plastics" With Respect to Component Material of Chief Value Determinations

Date: July 10, 1981
File: CLA-2 COR:CV:G
068494 C

Re: Decision on Application for Further Review of Protest No. 1001-0-006262

AREA DIRECTOR OF CUSTOMS,
6 World Trade Center,
New York, New York

DEAR SIR: This protest was filed against your decision in the liquidation on March 28, 1960, of entry No. 79-576527 dated April 9, 1979.

This ruling concerns the interpretation of the term "rubber or plastics" with respect to component material of chief value determinations.

Facts: The footwear in issue consists of joggers made of leather, man-made fabric, rubber and plastics. This footwear was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 12.5 percent ad valorem.

The protestant claims that the instant footwear is properly classifiable, depending on gender, under the provision for other footwear of leather for men, youths or boys in item 700.35, TSUS, with duty at the rate of 8.5 percent ad valorem or at the rate of 10 percent ad valorem under item 700.45, TSUS, as other footwear of leather for other persons valued over $2.50 per pair.

The protestant insists that the controverted footwear is in chief value of leather based on a theory that in determining component material of chief value of the footwear the rubber and plastic portions thereof are considered separate components.

This office has previously ruled in HRL 056343 dated May 30, 1978, that the "rubber or plastics" portion of an article is considered as one material for tariff classification purposes.

The protestant also claims that a proportionate share of the cost of

stitching leather overlays onto the fabric uppers should be allocated to the value of the leather component.

Issue: 1. Whether the rubber and plastics portion of the footwear should be considered as one component material in determining component material of chief value.

2. Whether the cost of stitching the leather overlays onto the fabric upper should be allocated among the materials in proportion to their relative quantities.

3. Whether the costs of grinding and buffing the different layers of the bottoms should be allocated among the materials comprising the bottoms.

4. Whether the footwear is classifiable as claimed by the protestant or is classifiable under the provision for other footwear in item 700.95 TSUS.

Law and analysis: Schedule 7, Part 12, Headnote 1(c), TSUS, provides that "for the purposes of the tariff schedules—the term '*rubber or plastics*' means rubber, plastics, or combinations of rubber and plastics."

General Headnote 9(f)(i), TSUS, provides that "*Definitions.* For the purposes of the schedules, unless the context otherwise requires (f) the terms "of," "wholly of," "almost wholly of," "in part of," and "containing," when used between the description of an article and a material (*e.g.*, "furniture of wood," "woven fabrics, *wholly of* cotton," etc.), have the following meanings (i) "of" means that the article is wholly or in chief value of the named material."

General Interpretative Rule 10(f), TSUS, provides that "an article is in chief value of a material if such material exceeds in value each other single component material of the article."

The predecessor provision to General Interpretative Rule 10(f), paragraph 1559(b), Tariff Act of 1930, as amended, provides that "the words "component of chief value" whenever used in this act, shall be held to mean that component material which shall exceed in value any other single component material of the article involved; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article."

The relevant excerpts from our previous ruling (HRL 056343) dated May 30, 1978, are as follows:

> Past practice dictates that the "rubber or plastics" portion of an article be considered as one material for tariff classification purposes. This interpretation is supported by the Explanatory Notes to Schedule 7, Part 12 of the Tariff Classification Study (p. 663) which state that the term "rubber or plastics" was adopted to eliminate the often impossible task of distinguishing

between these two materials. "Rubber or Plastics" is therefore a single component.

You also contend that Headnote 1(c) of Schedule 7, Part 12, containing the definition of the term "rubber or plastics" is relevant to the classification of footwear only to determine the material of chief weight because that is the sole context in which "of rubber or plastics" appears in Schedule 7, Part 1A. This is not the most natural or logical construction of the "of rubber or plastics" provision. That provision is to be construed as applying to any article to determine its material(s) in chief value. It is applicable throughout the tariff schedules and is not limited solely to a provision in which the phrase "of rubber or plastics" appears.

The single component material rule set forth in General Interpretative Rule 10(f), TSUS, and its predecessor provision, paragraph 1559(b), Tariff Act of 1930, as amended, *supra*, must be followed unless Congress has expressly prescribed an exception which allows the combining of values of different materials in component material of chief value determinations. See *Steinhardt & Bro.* v. *United States*, 8 Ct. Cust. Appls. 372, T.D. 37629 (1918); *Chin & Co.* v. *United States*, 11 Ct. Cust. Appls. 124, T.D. 38932 (1921); *Swiss Manufacturers Association, Inc., et al* v. *United States*, 39 Cust. Ct. 227, C.D. 1933 (1957) and *Kaplan Products & Textiles, Inc.* v. *United States*, 49 Cust. Ct. 145, C.D. 2376 (1962), aff'd 51 CCPA 2, C.A.D. 828 (1963).

The threshold question to be resolved here is whether Schedule 7, Part 12, Headnote 1(c), TSUS, *supra*, contains such an express exception to the single component material rule which would allow the values of the rubber and plastics in the footwear to be combined for the purposes determining component material of chief value. It is our view that a reading of the legislative history to Schedule 7, Part 12, TSUS, *supra*, compels the conclusion that Headnote 1(c) provides the express exception to the single component rule set forth in General Interpretative Rule 10(f), TSUS. Consequently, the values of the plastic and rubber portions of the footwear in issue may be combined for the purpose of determining component material in chief value.

It is a cardinal principle of Customs law that the component material of chief value must be determined at the time when the components have reached such a condition that nothing remains to be done to them except put them together. *See Berger* v. *Hardy*, 150 U.S. 420, 14 SCR 170, 37 L. ED 1129 (1893); *Turner & Company et al* v. *United States*, 12 Ct. Cust. Appls. 48, T.D. 39997 (1924); *United States* v. *Bernard Judae & Company*, 15 Ct. Cust. Appls. 172, T.D. 42231 (1927); *United States* v. *Jovita Perez et., al.* 44 CCPA

35, 39 C.A.D. 633 (1957); *N. Erlanger Blumgart Co., Inc.* v. *United States*, 57 CCPA 127, C.A.D. 991 (1970).

With respect to the question of allocating the cost of stitching the leather to fabric it is your view that the joining of two pieces of the same material is part of the value of that material while the joining of two different materials assuming that they are already recognizable as component materials is not allocated to either.

In the case of *Jimlar Corp.* v. *United States*, 78 Cust. Ct. 182, CRD 77–2 (1977), relating to a component material of chief value determination of certain footwear uppers the court stated that "It is also settled that the value of each component in an article includes not only the cost of the basic material, but the work put on it to bring it to the point of assembly, and thus in a subassembly of two or more components, the costs of subassembly are to be added to the various components in proportion to their relevant quantities or weights. *Field & Company* v. *United States*, 7 Ct. Cust. Appls. 332, T.D. 36876 (1916). *N. Erlanger Blumgart Co., Inc.* v. *United States*, 57 CCPA 127, C.A.D. 1991 (1970)."

Following this case, it is our view that the stitching and tread costs involved in attaching the leather to fabric are incurred in the subassembly of the uppers prior to the final assembly of the uppers to the soles. Consequently, such costs should be allocated among the materials found in the uppers in proportion of their relative weights.

It is also our position that the cost of grinding and buffing of the different layers of the bottoms should be allocated among the materials comprising the bottoms. Our rationale for this position is that the fusing and grinding of the outsole layers are necessary steps completed prior to the two final assembly processes, *i.e.*, lasting the uppers to the insoles and then cementing the lasted uppers to the bottoms.

Holding: 1. The values of the rubber and plastics portions of the footwear uppers should be combined for component material of chief value determinations.

2. The cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights.

3. The costs of grinding and buffing the different layers of the bottoms should be allocated among the materials comprising the bottoms.

The protest should be denied with respect protestant's claim that the rubber and plastics material in the uppers should be treated as separate components for component material of chief value determination.

The protest should be allowed with respect to protestant's claim that the cost of stitching leather overlays onto the fabric uppers

should be allocated among the materials comprising the uppers in proportion to their relative weights.

A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant. The protest file is enclosed herewith.

(C.S.D. 81–240)

Subject: Drawback: The Use of a Through Bill of Lading Which is Issued by a Party Other Than the Exporting Carrier Does Not Satisfy Section 22.7(c), Customs Regulations

Date: July 10, 1981
File: DRA–1–CO:R:CD:D
213070 WR

Issue: Whether a contract of carriage to a named point outside the United States can satisfy the clause of section 22.7(c), Customs Regulations (19 CFR 22.7(c))?

Facts: An inquirer claims that it is common at inland ports for goods to be moved under a through bill of lading issued by a person who may not be the exporting carrier. The inquirer states that the through bill of lading will show receipt of the goods at the inland port and will contain the receiving carrier's promise to deliver the goods to a named place outside the United States.

Law and analysis: The statute, 19 U.S.C. 1313, sets an absolute requirement that, for entitlement to drawback, the completed articles must be exported within five years after the date of importation. As such it is clear that the Customs Service can implement the statute only with a procedure that will not thwart or weaken compliance with that requirement.

The present procedure was chosen after a number of alternatives were considered and rejected. See Notice of Proposed Rulemaking published April 23, 1970 (35 F.R. 6505), Supplemental Notice published March 3, 1971 (36 F.R. 4046), and the Final Rule published as T.D. 72–310 (6 Cust. Bull. 639). Obviously, only a person who has knowledge of an event is in a position to certify occurrence of the event. The carrier who conducted the export movement should be able to provide evidence when that movement occurred. A freight forwarder at an inland port who only receives the merchandise may not have knowledge of the date and time the exportation occurred. The records of a person which shows only the date goods were received at the inland port are inadequate to establish the date of exportation. Without more, they are useless for the purpose intended.

The uncertified notice of exportation procedure requires the ex-

istence of records within the jurisdiction of the United States which establish the date of exportation. Any procedure chosen by the Customs Service to implement the statute must be shown to insure compliance with any requirement specifically set in the statute. A document issued by a carrier who exports the goods (assuming it is legible, satisfactorily identifies the goods and identifies the individual who has actual knowledge of the event) can meet that requirement. A document which does not purport to show when the goods were exported and is prepared before the event occurs does not meet that statutory requirement.

Holding: The Customs Service cannot approve the use of evidence that can not show compliance with the requirements of 19 U.S.C. 1313. An audit of records of a person who received goods at an inland port can not show when the received goods were exported unless that person was the exporting carrier. The use of a through bill of lading which is issued by someone other than the exporting carrier does not satisfy section 22.7(c), Customs Regulations.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the Customs Bulletin, through June 15, 1981, are available in microfiche format at a cost of $34.05 ($0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: November 18, 1981.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

Date of decision	File No.	Issue
10- 8-81	065441	Classification: pocket knives (649.83)
10-27-81	065942	Classification: hunting style boot (700.56)
10- 8-81	066393	Classification: polyethelene tubing (772.65)
10-23-81	066705	Classification: nylon vest (380.84)

Date of decision	File No.	Issue
10–22–81	066855	Classification: epaulets on ladies coat and simulated features on ladies coat held not to be ornamentation
10– 8–81	068156	Classification: action game consisting of plastic domed article with six metal balls and two small plastic rings inside the dome (737.95)
	068180	Classification: men's casual shoes held to be like or similar to a domestic shoe and therefore subject to ASP
10–27–81	068197	Classification: toy figures of animate objects (737.35)
10–27–81	068390	Classification: insoles (389.62)
10–30–81	068512	Classification: scale model of a chemical plant (737.15)
10–16–81	068631	Classification: handicraft set (651.75)
10–16–81	068699	Classification: certain military medals (740.14, 740.38)
10–30–81	068721	Classification: plastic grips for bicycles (732.42)
10–23–81	068739	Classification: women's sweaters (382.58, 382.78)
10–27–81	068800	Classification: roll towel cleaning machine (670.43)
10– 9–81	068877	Classification: winter type gloves designed for use in the sport of golf (734.77)
10–23–81	068924	Classification: toilet bowl brush and brush pot (750.70)
10–27–81	068938	Classification: tote bags and backpack made of rayon material (706.28)
10– 9–81	068961	Classification: key chain attached to a puzzle block (735.20, 740.30, 740.38)
10–15–81	068978	Classification: artificial flowers (748.21)
10–22–81	068985	Classification: footwear imported from South Korea is properly appraised at ASP values
10– 8–81	068989	Classification: tarpaulins with brass grommets (774.55)
10–22–81	069010	Classification: footwear having an upper of fabric coated with polyurethane material (700.56)
10–22–81	069027	Classification: castings used in logging trailers (692.32)
10–29–81	069029	Classification: cellulose acetate sheets (771.20)
10–27–81	069093	Classification: American selling price basis of valuation to certain footwear produced in Taiwan
10– 9–81	069113	Classification: Whether double strips of fabric holding down epaulets on raincoats constitute ornamentation
10–27–81	105217	Vessels: whether the failure of a diesel engine 3000 hours after an overhaul is remissible as a casualty under 19 U.S.C. 1466(d)(1)
10–26–81	105325	Vessels: bare-boat charter of foreign flag vessel to U.S. residents. Possible qualification for cruising license
10–15–81	105335	Vessels: whether sail trainees who pay for training on board a vessel are passengers
10–23–81	105344	International Traffic: the classification of certain metal pallets as instruments of international traffic
10–29–81	105351	Vessels: foreign-flag vessel may load cable at U.S. port and lay the cable between the coastwise points without violating 46 U.S.C. 883

Date of decision	File No.	Issue
9–29–81	105317	Vessels: whether sail trainees who must be on board vessel and who pay for instruction are passengers
10–28–81	105365	Vessels: the dutiability of temporary repairs and/or alterations
10–28–81	105367	Vessels: dutiability of a yacht built in Taiwan and applicability of GSP
	105373	Vessels: whether baggage/articles checked by a ticketed passenger on a foreign vessel is "merchandise" within the meaning of 46 U.S.C. 883
10–23–81	542587	Value: dutiable export value under section 402(b), T.A. of 1930, of jewelry purchased by returning U.S. resident may not properly be determined merely by taking 60 percent of price paid or by dividing domestic value by a certain factor
9– 3–81	801134	Classification: dancing clown music box (654.20)
9– 9–81	801186	Classification: pants with drawstring waist (382.42)
9– 3–81	801218	Classification: polyvinyl chloride record compound (445.48)
9– 8–81	801222	Classification: polyester harness cord (348.05)
9– 1–81	801226	Classification: boys woven synthetic chief value jacket (380.84)
9– 3–81	801271	Classification: boy's nylon jacket (376.56)
9– 8–81	801275	Classification: panty protectors (256.70)
9–10–81	801287	Classification: boys' cotton indigo denim jeans (380.39)
9–10–81	801288	Classification: concentrated beverage base fortified with vitamins (183.05)
9– 8–81	801295	Classification: men's ski jackets (380.84)
9–10–81	801307	Classification: clear laminated woven polypropylene bag (385.53)

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–100)

ST. REGIS PAPER COMPANY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 79–5–00925

Before RAO, *Judge.*

On Defendant's Motion To Dismiss and Plaintiff's Opposition Thereto and Cross-Motion To Suspend and Defendant's Opposition Thereto

Freeman, Meade, Wasserman & Schneider (*Louis Schneider* of counsel and *Herbert Peter Larsen* on the brief) for the plaintiff.

J. Paul McGrath, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office (*Barbara M. Epstein* on the briefs), for the defendant.

(Dated November 3, 1981)

RAO, *Judge:* This civil action involves three entries of paper imported by plaintiff at New York. The entries, Nos. 493994, 525764 and 529941, were made on July 27, 1977, August 19, 1977 and August 24, 1977, respectively. Timely protests were filed against the classification of the merchandise as papers, not impregnated, other, under item 252.90, Tariff Schedules of the United States, as amended, at 10 percent ad valorem. These protests were denied in due course, but plaintiff did not file a summons in this court within 180 days pursuant to 28 U.S.C. § 2631(a)(1) (1976), in order to preserve its right of action to contest the classification of the merchandise.

By letter of August 25, 1978 plaintiff requested the Customs Service to reliquidate the entries involved herein to correct "a clerical error, mistake or other inadvertence not amounting to an error in the construction of a law" as authorized by section 520(c)(1) of the Tariff Act of 1930, as amended [19 U.S.C. § 1520(c)(1)]. Plaintiff protested Customs' refusal to reliquidate the entries to correct the mistake of fact it alleged had occurred and subsequently filed a timely summons and a timely complaint, the present action.

Defendant filed a motion to dismiss for lack of jurisdiction or, alternatively, for failure to state a claim upon which relief may be granted, and plaintiff subsequently filed its opposition to this motion and a cross-motion to suspend this case under *St. Regis Paper Company* v. *United States*, Court No. 79–4–00673.

The provisions of 19 U.S.C. § 1520(c)(1) in effect at the relevant time required that "a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law . . . [be] brought to the attention of the customs service within one year after the date of entry, or transaction, or within ninety days after liquidation or exaction when the liquidation or exaction is made more than nine months after the date of the entry, or transaction." [1]

The language of the statute is clear and unambiguous. The error or mistake of fact must have been brought to the attention of the appropriate customs officer within one year after the date of entry or transaction. The latest day on which the alleged error or mistake of fact could have been called to the attention of Customs for any of the entries would have been August 24, 1978, that entry being No. 529941. The alleged errors or mistakes of fact in the other two entries were

[1] Although this provision was amended by Pub. L. 95–410 in 1978 to require the bringing of the error, mistake of fact, or other inadvertence to the attention of the appropriate customs officer within one year after the date of liquidation or exaction, it is of no avail to plaintiff as this provi sion did not become operative until October 3, 1978.

clearly not brought to the attention of Customs within the required time period. In computing whether an act is made within one year, the day from which the time is reckoned is excluded in making the reckoning. *Hudspith* v. *Pierce-Arrow Motor Car. Co.*, 167 N.Y.S. 418, 419; *State* v. *Jones*, 11 Iowa 11.

Nor is plaintiff able to bring itself within the purview of the statute's provision requiring the mistake of fact to be brought to the attention of Customs within ninety days after liquidation when liquidation occurs more than nine months after the date of entry. For each of the entries involved herein, liquidation took place within one month of the date of entry.[2] The plaintiff did not bring the mistake of fact to the attention of the appropriate customs officer until approximately eleven or twelve months after the dates of liquidation.

For the foregoing reasons, it is ordered and adjudged that defendant's motion to dismiss is granted and plaintiff's cross-motion to suspend is denied.

[2] See the following table:

Entry No.	Date of entry	Date of liquidation
493994	7/27/77	8/26/77
525764	8/19/77	9/16/77
529941	8/24/77	9/16/77

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *November 9, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/182	Maletz, J. November 2, 1981	International Seaway Trading Corp.	67/51060, etc.	Item 700.60 20%	Item 700.70 15%, 13%, 12%, 10%, 9% or 7.5%	International Seaway Trading Corp. v. U.S. (C.D. 4773)	Savannah Footwear
P81/183	Re, C.J. November 6, 1981	Kombi Ltd.	77-1-00081, etc.	Item 704.85 32.5%+25¢ per lb.	Item 734.97 or 734.99 9%	Agreed statement of facts	New York Ski glove liners
P81/184	Maletz, J. November 6, 1981	A & S Trading Co.	79-5-00900	Item 737.30 18%	Item 685.22 12.5%	U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	New York Poodle radios

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/384	Re, C.J. November 2, 1981	Marubeni America Corp.	77-2-00240	Export value	Invoiced unit value, less ocean freight and marine insurance, and without additions to said value for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Synthetic fabrics
R81/385	Rao, J. November 2, 1981	National Silver Co. et al.	R62/8482, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Table cutlery and stainless steel flatware
R81/386	Rao, J. November 2, 1981	National Silver Co.	R62/8705, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Table cutlery and stainless steel flatware

R81/387	Rao, J. November 2, 1981	Tanross Supply Co.	285001-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R81/388	Richardson, J. November 2, 1981	Concord Electronics Corp.	R66/5334, etc.	Export value	Invoice unit value exclusive of buying commission and bank interest shown on invoices	Concord Electronics Corp. v. U.S. (C.D. 4877)	New York Electronic equipment
R81/389	Rao, J. November 6, 1981	American Thermo-Ware Co.	242758-A	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
R81/390	Rao, J. November 6, 1981	Kanematsu New York Inc.	R61/18511, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sewing machine heads
R81/391	Rao, J. November 6, 1981	Mitsui & Co. Ltd.	R62/13525, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Sewing machine heads
R81/392	Rao, J. November 6, 1981	Henry A. Wess, Inc.	R60/14016, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Cincinnati (Cleveland) Prism binoculars

Judgement of the United States Court of International Trade in Appealed Case

November 3, 1981

APPEAL 80-40.—United States *v.* Elbe Products Corp.—IMITATION LEATHER USED FOR SHOE LININGS—NONWOVEN FABRICS OF MANMADE FIBERS—FLEXIBLE STRIPS AND SHEETS OF NON-CELLULOSIC PLASTICS MATERIALS—TSUS.—C.D. 4865 affirmed July 16, 1981 (C.A.D. 1267).

Appeals to United States Court of Customs and Patent Appeals

APPEAL 81-30.—The United States, et al. *v.* Associated Dry Goods Corp.—QUOTA ON WOOL SWEATERS—SHETLAND WOOL FULL-FASHIONED LADIES' SWEATERS—TSUS—Appeal from Decision and Judgment in Slip Op 81-70.

This case arises under an Agreement Relating to Trade in Cotton, Wool and Man-made Fiber Textiles and Textile Products entered into between the United States and the People's Republic of China on September 17, 1980. Although the Agreement specified quantative limits for some categories of textile products, the category in which this merchandise falls (category 445/446) is unlimited.

The merchandise was exported from the People's Republic of China on January 18, 1981 and on January 24, 1981. When it arrived in the United States, it was excluded from entry and stored in a bonded warehouse by the customs officials, pursuant to a quota for the merchandise established by the Committee for Implementation of Textile Agreements. The Committee was created by Executive Order 11651 of March 3, 1972 to supervise and implement all trade agreements. Accordingly, the Committee established an import quota level of 183,706 dozen sweaters.

Plaintiff-appellee alleges and defendant-appellants admit that this quota was filled on February 9, 1981. Imports from the People's

Republic of China of category 445/446 sweaters had been refused entry into the United States since that date. Plaintiff-appellee attempted to enter the merchandise subsequent to February 9, 1981, the date on which the quota was filled.

In Paragraph 8 of the Agreement, the United States reserved the right to request consultations with the People's Republic of China if it believed that imports in any category or categories, not covered by specific limits, due to market disruption, threatened to impede the orderly development of trade between the two countries.

Plaintiff-appellee claims that the merchandise was wrongfully denied entry because the Committee for the Implementation of Textile Agreements miscalculated the quota level at 183,706 dozen sweaters, and also because the Committee erred in concluding that its importations of category 445/446 merchandise from the People's Republic of China were causing market disruption, or threat of disruption.

Defendant-appellants moved to dismiss the case contending that the United States Court of International Trade lacks jurisdiction over this controversy, because it involves foreign policy considerations and the conduct of foreign affairs. Defendant-appellants also contend that plaintiff-appellee has not stated a claim as to which relief may be granted.

The United States Court of International Trade disagrees with both of defendant-appellants' contensions. The Court decided that it has plenary jurisdiction to review the entire matter pursuant to 28 U.S.C. 1581(i) (3) and (4), and ordered that within 90 days from the date of its decision, the Committee for the Implementation of Textile Agreements shall issue a new determination after re-evaluation of the data upon which it based its findings of threat to market disruption; that plaintiff-appellee's merchandise be released by the customs service from the bonded warehouse, with the exception of the merchandise which is the subject of Protest No. 1001–1–003596; and that defendant-appellees' motion is denied.

Defendant-appellants, being dissatisfied with the decision and judgment of the United States Court of International Trade respectfully pray the United States Court of Customs and Patent Appeals pursuant to sections 1541(a) and 2601 (a) and (b), Title 28 U.S. Code, to review the questions involved therein and to grant such relief in the premises as to the Court shall seem just.

APPEAL 81–31.—Texas Instruments, Inc. *v.* The United States —CUE MODULES (ELECTRONIC ASSEMBLIES)—OTHER PARTS OF PHOTOGRAPHIC CAMERAS—SUMMARY JUDGMENT—TSUS—Appeal from Decision and Judgment in Slip Op. 81–67

In this case, the merchandise was imported from Taiwan in May 1977. Upon entry at the Port of Honolulu, the District Director of Customs classified the merchandise under TSUS Item 722.22 as "Other" parts of photographic cameras, as modified by T.D. 68–9, and assessed duty thereon at 10 percentum ad valorem.

Plaintiff-appellant claims that the imported merchandise should have been classified under TSUS Item A722.34 and granted duty-free treatment under the Generalized System of Preferences (GSP) Statute and General Headnote 3(c), TSUS.

Plaintiff-appellant moved for summary judgment. Defendant-appellee responded to plaintiff-appellee's motion and crossmoved for summary judgment.

Upon consideration of all of the facts and the evidence before it, the United States Court of International Trade denied plaintiff-appellant's motion for summary judgment and granted defendant-appellee's motion for summary judgment.

Plaintiff-appellant, being dissatisfied with the decision and judgment of the United States Court of International Trade, appealed to the United States Court of Customs and Patent Appeals and respectfully prays, pursuant to Sections 1541(a) and 2601(a) and (b), Title 28, United States Code, to review the questions involved therein and to grant such relief in the premises as to the Court shall seem just.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, NOVEMBER 19, 1981

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commisioner of Customs.

In the Matter of CERTAIN APPARATUS FOR THE CONTINUOUS PRODUCTION OF COPPER ROD	Investigation No. 337–TA–89

Notice of Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of Investigation.

SUPPLEMENTARY INFORMATION: On October 19, 1981, complainant Southwire Co., respondents Fried. Krupp G.m.B.H. and Krupp International Inc., and the Commission investigative attorney jointly moved to terminate the above-captioned investigation based upon settlement agreements signed by Southwire and the Krupp respondents (Motion 89–31C). Respondents Phelps Dodge Corp. and Phelps Dodge Industries, Inc., do not oppose terminations.

The settlements which form the basis for the parties motion for termination were approved as being in the public interest by the Commission on July 6, 1981.

On November 13, 1981, the Commission granted Motion 89–31C and terminated investigation No. 337–TA–89.

This investigation was instituted as a result of a complaint filed by Southwire Co. under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), alleging that the Krupp respondents were in violation of

that statute by reason of infringement of claims of U.S. Letters Patent 4,129,170. A notice of institution was published in the *Federal Register* on August 13, 1980 (45 FR 53923).

Copies of the Commission's Action and Order and all other nonconfidential documents in the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington D.C. 20436, telephone 202-523-0161.

FOR FURTHLR INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

By order of the Commission.

Issued: November 16, 1981.

KENNETH R. MASON,
Secretary.

(19 CFR 207.40)

Notice of Termination of Countervailing Duty Investigation Concerning Die Presses from Italy

AGENCY: United States International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to die presses from Italy.

EFFECTIVE DATE: November 11, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy, Office of Investigations, telephone number (202) 523–1369.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On March 28, 1980, the Commission received a request from the Delegation of the Commission of the European Communities for the review of the outstanding countervailing duty order on die presses from Italy (T.D. 74–165).

On August 24, 1981, the Commission was notified by letter that

Herman Schwabe, Inc., the original petitioner for the countervailing duty order, wished to withdraw its petition on die presses.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On September 23, 1981, (46 FR 47032) the Commission published a notice in the *Federal Register* requesting public comment by October 23, 1981 on the proposed termination of the Commission investigation on die presses from Italy. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation under section 104(b)(1) of the Trade Agreements Act of 1979 on die presses from Italy (T.D. 74–165). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this *Federal Register* notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued: November 13, 1981

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